

ESTTA Tracking number: **ESTTA139922**

Filing date: **05/10/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045238
Party	Plaintiff Rexam Closures and Containers, Inc. Rexam Closures and Containers, Inc. Rexam Closures and Containers, Inc. Rexam Closures and Containers, Inc. Rexam Closures and Containers, Inc. 3245 Kansas Road Evansville, IN 47711 UNITED STATES
Correspondence Address	Julie Ann Gregory and Brian P. McGraw Middleton Reutlinger 2500 Brown & Williamson Tower Louisville, KY 40202 UNITED STATES bmcgraw@middreut.com
Submission	Motion to Suspend for Settlement Discussions
Filer's Name	Brian P. McGraw
Filer's e-mail	bmcgraw@middreut.com
Signature	/Brian McGraw/
Date	05/10/2007
Attachments	MOTION TO SUSPEND.pdf ( 5 pages )(135396 bytes )

Petitioner, Rexam Closures and Containers Inc. (“Rexam” or “Petitioner”), by counsel, pursuant to Trademark Rule 2.117 (c), hereby moves for suspension of all proceedings pertaining to its Petition to Cancel Reg. No. 2,827,685 (“the ‘685 Registration”), pending the outcome of *ex parte* prosecution of Petitioner’s U.S. Trademark Application No. 78/511,323. In support of said motion, Petitioner states as follows:

On November 4, 2004, Petitioner filed a trademark application for the mark SNAP LOK, App. Serial No. 78/511,323 (“the ‘323 Application”), for use in connection with “non-metal closures for containers” in International Class 20. Respondent’s ‘685 Registration was cited under Section 2(d) of the Trademark Act as a basis for refusing registration of Petitioner’s ‘323 Application. As such, Petitioner filed a Petition to Cancel on December 7, 2005. The U.S. Patent & Trademark Office instituted this cancellation, No. 92045238, on December 14, 2005. Respondent was originally required to answer the complaint by January 23, 2006. However, Respondent did not file an Answer or otherwise respond to the complaint and the Petitioner filed a Motion for Default Judgment. On February 11, 2006, Respondent filed a response to Petitioner’s Motion for Default Judgment concurrently with its Answer. The Board denied Petitioner’s Motion for Default Judgment, accepted Respondent’s late Answer, and reset the discovery dates.

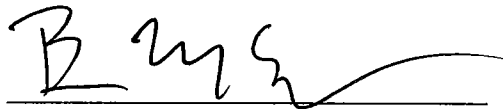
In the meantime, the Parties attempted to negotiate settlement of this matter and had come to an initial agreement. However, the original negotiations broke off and the Cancellation resumed after Petitioner filed a Motion to Reopen Discovery, which was granted on February 7, 2007. The discovery dates were reset as follows: discovery to close: May 10, 2007; thirty-day testimony period for party in position of plaintiff to close: August 8, 2007; thirty-day testimony period for party in position of defendant to close: October 7, 2007; fifteen-day rebuttal testimony period for plaintiff to close: November 21, 2007.

Since the discovery periods were re-opened, the parties have engaged in settlement negotiations and have come to an agreement in that regard. Specifically, the parties have now signed and executed a Consent Agreement related to the parties’ use of

their respective marks. Petitioner will submit this Consent Agreement in support of its arguments against the Trademark Examining Attorney's refusal of Petitioner's '323 Application under Section 2(d) of the Trademark Act. Petitioner respectfully requests that these proceedings be suspended pending the Trademark Examining Attorney's acceptance of the above referenced Consent Agreement, subject to the right of either party to request resumption of proceedings at any time prior thereto. *See e.g., The Tamarkin Co. v. Seaway Food Town Inc.*, 34 U.S.P.Q.2d 1587, 1592 (T.T.A.B. 1995) (suspended pending consideration of consent agreement by examining attorney).

Dated: May 10, 2007

Respectfully submitted,



Julie Ann Gregory

Brian P. McGraw

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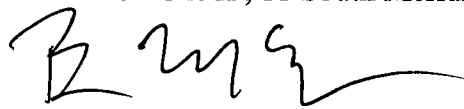
[bmcgraw@middreut.com](mailto:bmcgraw@middreut.com).

COUNSEL FOR PETITIONER

REXAM CLOSURES & CONTAINERS,  
INC.

### **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Motion to Suspend, with tendered order, was served this 10th day of May, 2007, by electronic mail, to counsel for Respondent, Mary Jane Frisby, BARNES & THORNBURG LLP, 11 South Meridian Street, Indianapolis, Indiana 46204.



COUNSEL FOR PETITIONER  
REXAM CLOSURES AND CONTAINERS, INC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of U.S. Registration No. 2,827,685**

**Mark: SNAPLOC**

**Registration Date: March 30, 2004**

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REXAM CLOSURES  
AND CONTAINERS INC.

Petitioner

v.

BERRY PLASTICS CORPORATION.

Registrant

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Cancellation No. 92045238

**ORDER**

Petitioner, Rexam Closures and Containers Inc., having moved pursuant to Trademark Rule 2.117 (c) for the suspension of Cancellation No. 92045238, and the Board having considered the motion and the record, and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the Petitioner's Motion to Suspend the Cancellation Proceeding, pending the *ex parte* prosecution of Application Serial No. 78/511,323, is GRANTED.

**So Ordered this \_\_\_\_\_ day of May, 2007.**

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TRADEMARK TRIAL AND APPEAL BOARD

Tendered by:

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